80-1100

Supreme Court, U.S.
FILED
DEC 31 1980
MICHAEL RODAK, JR., CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

MARRIOTT CORPORATION, et al.,
Petitioners,

vs.

BETHLEHEM STEEL CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PETITIONERS' APPENDIX

THOMAS O. MURPHY
DOUGLAS N. BARR
THOMPSON, HINE AND FLORY
1100 NATIONAL CITY BANK
BUILDING
CLEVELAND, OHIO 44114
(216) 566-5577

Counsel for Petitioners

APPENDIX A

No. 78-3137
No. 78-3138

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

IN THE MATTER OF THE COMPLAINT OF BETHLEHEM STEEL CORPORATION, ETC. BETHLEHEM STEEL CORPORATION, *Plaintiff-Appellee-Cross-Appellant,* v. MARRIOTT CORPORATION, ET AL., *Claimants-Appellants-Cross-Appellees.*	APPEAL from the United States District Court for the Northern District of Ohio.

Decided and Filed October 2, 1980.

Before: EDWARDS, Chief Judge; LIVELY and ENGEL, Circuit Judges.

LIVELY, Circuit Judge. This admiralty case presents several issues related to limitation of liability[1] which have not been decided previously by this court.

---

[1] Virtually all maritime nations have provisions whereby shipowners are able to limit their liability for losses occasioned by the operation of their vessels. A concise history of limitation of liability under American law is contained in Chief Justice Taft's opinion in *Hartford Accident & Indemnity Co. v. Southern Pacific Co.*, 273 U.S. 207, 214-18 (1927).

I.

The Steelton, a Great Lakes steamship owned by the plaintiff Bethlehem, collided with a highway bridge which spanned the Welland Canal. The Welland Canal lies wholly within the territorial boundaries of Canada. The bridge, owned by the St. Lawrence Seaway Authority, was extensively damaged and the canal was completely blocked for approximately two weeks. A number of ships were required to interrupt their voyages and stand by until the canal was cleared. Shortly after the collision Bethlehem filed an action in the Federal Court of Canada for limitation of liability under Canadian law, naming as defendants the Seaway Authority "and all other persons having claims against the plaintiff, its ship 'Steelton' or the fund hereby to be created." The Canadian court entered an order limiting liability to $671,489 (Canadian), plus interest to date of deposit. Bethlehem deposited with the Canadian court $680,733, including interest ($691,761 (U.S.)). The Canadian court stayed all further proceedings arising out of the collision and entered a notice with provision for publication, requiring all persons who claimed damage from the collision to file their claims with that court.

A number of actions asserting claims arising out of the Steelton incident were filed against Bethlehem in the United States District Court for the Northern District of Ohio. Thereafter Bethlehem filed the present action in that court petitioning for limitation of liability under 46 U.S.C. § 183[2] while

---

[2] § 183. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of chapter 8 of title 46 of the Revised Statutes and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefore, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be

claiming the benefit of the lesser limitation provided by the Canada Shipping Act.[3] The district court then ordered all persons claiming damage from the Steelton incident to file claims with it, and enjoined the institution and prosecution of any actions arising from the incident, except the instant proceeding and the one already pending in the Federal Court of Canada. The total claims filed in the two actions were far in excess of the amount available for their satisfaction under the limitation provisions of either Canadian law or 46 U.S.C. § 183.

II.

A.

The district court recognized the general rule that the right to recover for a tort is governed by the law of the place where the tort occurred. At the same time, the court recognized that the law of the forum determines procedural matters. Thus, the district court convened a hearing to determine whether the Canadian limitation law is substantive or procedural. Both Bethlehem and the claimants produced expert witnesses, Canadian attorneys, who agreed that there are no Canadian cases which define the nature of the limitation law. However, the experts disagreed in their opinions on the nature of the law, Bethlehem's witness proclaiming it substantive and the claimants' witness labeling it procedural.

---

appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease.

[3] Whereas the Canadian law limits liability to a stated amount per ton, 46 U.S.C. § 183 provides that liability of the owner of the vessel "shall not . . . exceed the amount or value of the interest of such owner in such vessel, and her freight then pending." The Steelton had no cargo, and Bethlemen filed an *ad interim* stipulation for value of the ship in the amount of $850,000.

After considering the expert testimony and several English decisions, the district court concluded that "the limitation of liability provisions of the Canada Shipping Act are procedural and do not attach to the rights created by that Act." Thus, the court held that 46 U.S.C. § 183, the law of the forum, determines the maximum limitation of the fund created in this action. The effect of this ruling was to set Bethlehem's potential liability at $850,000 rather than $691,000. This is the holding from which Bethlehem has filed its cross-appeal.

B.

The judgment was first appealed by a group of shipowners and charterers whose claims were dismissed by the district court. The claimants, of which Marriott Corporation is one, are owners and charterers of vessels which were detained by reason of the obstruction of the Welland Canal following the Steelton's collision with the bridge. During the pendency of the district court action, the Canadian trial court entered a judgment dismissing all claims filed in that court based on detention of vessels. The judge of that court, Justice Addy, found that under Canadian law when a claim is only for economic loss, with no actual physical injury to the claimant, damages are generally not recoverable even where the injury might have been foreseeable and a proper causal relationship between act and injury exists. A case from the Supreme Court of Canada, *Rivtow Marine Ltd.* v. *Washington Iron Works*, [1974] S.C.R. 1189, [1973] 6 W.W.R. 692, was distinguished on the ground that "a proximity of relationship giving rise to a duty to warn" justified an award of damages for economic loss unaccompanied by physical injury in that products liability case. Concluding that the ruling of Justice Addy in a case involving the identical facts and legal issue presented in the instant case stated the controlling law of Canada, the district court held there could be no recovery for eco-

nomic loss resulting from vessel delay. This holding presents the second issue for determination on this appeal.[4]

III.

In *Ocean Steam Navigation Co.* v. *Mellor* (The Titanic), 233 U.S. 718 (1914), the primary question was whether the owner of a foreign ship may limit its liability for losses on the high seas by resort to the courts of the United States. The Supreme Court held that when a foreign ship is sued in the courts of this country it may invoke limitation under U.S. law. This is so even though the foundation for recovery is a British tort and under the circumstances of the case the ship in not subject to the substantive law of the United States.

Lower court decisions following *Titanic* have concluded that limitation of liability statutes relate to remedy rather than to liability or the right to recover. *E.g., Royal Mail Steam Packet Co.* v. *Companhia de Navegaco Lloyd Brasileiro*, 31 F.2d 757 (E.D.N.Y. 1928), *aff'd*, 55 F.2d 1082 (2d Cir.), *cert. denied*, 287 U.S. 607 (1932); *The Mando*, 102 F.2d 459 (2d Cir. 1939). The Supreme Court cast some doubt on the accepted rule of *The Titanic* in *Black Diamond Steamship Corp.* v. *Robert Stewart & Sons, Ltd.* (Norwalk Victory), 336 U.S. 386 (1949). In that case the only issue decided was the amount of bond required to be posted in the United States district court by the shipowner seeking to limit its liability for losses which occurred in foreign waters. The plaintiff sought limitation under the Brussels Convention and tendered a bond which would have satisfied the requirements of the Convention. The district court dismissed the action for failure to post the larger bond required by the American limitation statute. The Supreme Court reversed and remanded with di-

---

[4] We consider the issues in the same order they were decided by the district court. This order of proceeding is required by the Supreme Court's opinion in *Black Diamond Steamship Corp.* v. *Robert Stewart & Sons, Ltd.* (Norwalk Victory), 336 U.S. 386, 397-98 (1949).

rections to set aside the dismissal and make a determination of which limitation provision to apply. The Court also required the plaintiff to post the larger American bond to preserve the *status quo* pending appeal from the district court's ultimate decision. *Norwalk Victory* recognizes that the limitation statute of the forum does not always apply – contrary to the assumption of a number of courts following *The Titanic*. In looking at "the question whether there are any circumstances under which the Belgian limitation would be enforceable by our courts," the Supreme Court stated, ". . . if, indeed, the Belgian limitation attaches to the right, then nothing in *The Titanic*, 233 U.S. 718, stands in the way of observing that limitation." 336 U.S. at 395.

In *Norwalk Victory*, Justice Frankfurter did not disagree with the rule of *The Titanic*. He noted that the Court was dealing in that case with "a liability assumed already to exist on other grounds." *Id.* On the other hand, the district court in *Norwalk Victory* dismissed on the assumption that the law of the forum controlled because limitation laws are always procedural. Upon remand the district court was to determine "if it is the law of Belguim that the wrong creates no greater liability than that recognized by the Convention . . . ." *Id.* In other words, an American court may not assume that a foreign limitation of liability act is procedural. It must make a determination whether an independent basis of liability exists or whether under that nation's law "the wrong creates no greater liability than that recognized . . ." by the limitation act. If the *right* to recover is coextensive with the limitation on *amount* of recovery, then a limitation act is substantive and must be enforced by the forum. Viewed in this light *Norwalk Victory* does not represent a departure from the doctrine of *The Titanic*. Rather, it commands an inquiry into the nature of a foreign limitation act where it may not be assumed that liability already exists on other grounds.

In *Kloeckner Reederei Und Kohlenhandel G.M.B.H.* v. *A/S Hakedal* (The Western Farmer), 210 F.2d 754, 757 (2d Cir.

1954), Judge Learned Hand wrote, "*The Titanic* . . . finally settled it for us that such statutes [limitation acts] are part of the remedy, and that the law of the forum applies." He found nothing in *Norwalk Victory* which qualified this rule. Implicit in the holding is the assumption that liability for the tort existed on other grounds.

In *Petition of Chadade Steamship Co.* (The Yarmouth Castle), 266 F.Supp. 517 (S.D. Fla. 1967), the Panamanian owner of a cruise ship which burned and sank on the high seas petitioned a United States court for limitation of liability. The district court followed the procedure directed by the Court in *Norwalk Victory* and received expert testimony on the nature of the Panamanian limitation law. The court stated its conclusion as follows:

> The limitation of liability contained in the Panamanian law is substantive rather than procedural and attaches specifically to the right. 266 F.Supp. at 522.

Perceiving no overriding public policy of the United States which precludes doing so, the court applied the limitation provision of the law of Panama. The court in *Complaint of Ta Chi Navigation (Panama) Corp. S.A.*, 416 F.Supp. 371 (S.D. N.Y. 1976), refused to follow *The Yarmouth Castle*, applied the limitations provision of the United States rather than the Panamanian limitation provision, and held that the decision in *The Titanic* "still is the controlling law in the instant case." *Id.* at 377.

It is not surprising that the cases have produced different results. *The Titanic* concerned a disaster on the high seas. *Norwalk Victory*, on the other hand, dealt with a collision in Belgian territorial waters. One case involved great loss of life, the other only property damage. In some cases the parties seeking to limit their liability have been insurers rather than shipowners. *See Complaint of Ta Chi Navigation, supra*, 416 F. Supp. at 379. In a field as complex as maritime tort law

the choice-of-law problems are difficult, and the circumstances of each case determine the ultimate choices which the courts make. *See M. Hancock, Torts in the Conflict of Laws*, Ch. IX (1942).

The district judge in the present case followed the command of the Court in *Norwalk Victory*. Judge Krupansky received the testimony of Canadian lawyers and found the expert witness of the claimants the more persuasive. This witness stated his opinion that "the fixing of the amount or value of the Steelton's owner's limitation of liability is a matter of procedure and not a matter of substance." He stated that the Canadian limitation act provides for a "quantification" of damages, that it merely provides a procedural remedy for scaling down claims to the proportionate share of a limited fund. The witness supported his testimony with references to several English and Canadian decisions dealing with damages.

This court accepts the district court's conclusion that the Canadian limitation statute is procedural. This conclusion is supported by competent testimony. Furthermore, it represents a desirable choice-of-laws decision. The Steelton is an American ship. The parties who will be affected by this limitation decision chose to sue the Steelton's owner in a court of the United States rather than a court of Canada. Though the collision occurred in Canadian waters, insofar as the limitation between the present parties is concerned, the interest of the United States in applying its own legislatively determined concept of limitation is stronger than that of Canada. This appears to be a proper case for application of the law of the forum.

IV.

The second issue concerns not the amount, but the right of the claimants to recover. The right to recover damages is a matter of substantive law which is controlled by Canadian law "in the absence of some overriding domestic policy trans-

lated into law . . . ." *Norwalk Victory, supra*, 336 U.S. at 396. The claimants-appellants make a two-step argument. They assert, first, that the district court and the Canadian trial court erred in holding that under Canadian law a person may not recover purely economic losses resulting from another's negligence in the absence of physical damage to his person or property. The second contention is that even if the district court's construction of Canadian law is correct there is an "overriding domestic policy translated into law" which requires courts of this country to permit recovery in such circumstances.

A.

The district court dismissed the claims for damages suffered by shipowners whose vessels were detained. In doing so the court relied primarily on the decision of the Canadian federal trial court which had dismissed similar claims arising out of this collision. In determining to follow the Canadian court the district court discussed two Canadian decisions: *Rivtow Marine Ltd.* v. *Washington Iron Works*, [1974] S.C.R. 1189 and *Gypsum Carrier Inc.* v. *The Queen*, [1978] 1 F.C. 147, 78 D.L.R. (3d) 175. Different, though not necessarily inconsistent, results were reached in the two cases. In *Rivtow* a claimant who had suffered no physical damage was permitted to recover for economic loss. In *Gypsum Carrier* such claimants were denied recovery. It is clear from reading the opinions in the two cases, with their comprehensive surveys of Canadian and English decisions on the matter, that there is no hard and fast rule in Canada which forbids recovery for economic loss in the absence of physical damage.

In *Rivtow* the Supreme Court of Canada emphasized that the tort which caused the loss of the claimants was failure by the manufacturer and distributor of defective equipment, who knew how and where the equipment would be used, to warn the purchaser of the defects. The court found that the loss

of revenue suffered by the claimant was the immediate consequence of the breach of duty to warn. The court held that a "proximity of relationship" between the claimant and the defendants gave rise to the duty to warn and that loss of revenue was recoverable "as compensation for the direct and demonstrably foreseeable result of the breach of that duty." [1974] S.C.R. at 1215, 6 W.W.R. at 71.

The facts in *Gypsum Carrier* were similar to those in the present case. This ship damaged a railroad bridge, causing it to be closed for eight days. The claimants were railroads which had no proprietary interest in the damaged bridge, but which had contracts with the bridge owner permitting them to use it upon payment of a prescribed schedule of tolls. The railroads sued for the expense of re-routing their trains while the bridge was closed. The *Gypsum Carrier* court concluded that *Rivtow* is not properly limited to its fact situation and the particular relationship which existed there, noting that the Supreme Court of Canada has cited *Rivtow* for the broader principle that there may be recovery for pure economic loss without showing that a claimant has suffered physical injury to his person or property. Nevertheless, the *Gypsum Carrier* court concluded that the claim of the railroads was too remote to permit recovery. "The railways' economic loss was not . . . a direct and reasonably foreseeable result of the striking of the bridge by the vessel." 47 D.L.R. (3d) at 199.

It seems clear to us that the degree to which pure economic loss is recoverable under Canadian law is not free from doubt. Nevertheless, neither *Gypsum Carrier*, where the claim was similar to that of the plaintiffs in the present case, nor the decision of Justice Addy, where the facts are identical, was appealed. The district court's reliance on *Gypsum Carrier* and Justice Addy's opinion finds support in Canadian and English law. *See Star Village Tavern* v. *Nield*, [1976] 6 W.W.R. 80, 71 D.L.R. (3d) 439; *Trappa Holdings Ltd.* v. *Surrey & Imperial Paving Ltd.*, [1978] 6 W.W.R. 545; *Hunt* v. *T. W. Johnstone Co.*, [1976] 69 D.L.R. (3d) 639, 12 O.R. (2d) 623;

SCM (United Kingdom) Ltd. v. *W. J. Whittal & Son Ltd.*, [1970] 3 All E.R. 245. Judge Krupansky did not err in following the decision of Justice Addy as correctly stating the law of Canada.

B.

The claimants-appellants contend that even if Canadian law does not permit recovery for detention of vessels which suffer no physical injury, the law of the United States does permit such recovery and it should be applied. They recognize the general rule that substantive rights in a tort action are governed by the law of the place where the wrong occurred. However, they contend that a claim for loss for detention is an exception because of the existence of an "overriding domestic policy translated into law . . . ." *Norwalk Victory, supra*, 336 U.S. at 396.

In support of this assertion the claimants rely on two statutes and a number of cases. The statutes, 33 U.S.C. §§ 403 and 409,[5] clearly state a policy against obstruction of navigable waters. However, they do not deal with remedy, and the penalty provisions which follow[6] impose criminal sanctions in the form of fines and imprisonment plus revocation and suspension of the licenses of masters and pilots convicted there-

---

[5] 33 U.S.C. § 403

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; * * *

33 U.S.C. § 409

It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as "sack rafts of timber and logs" in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. * * *

[6] 33 U.S.C. §§ 411, 412

under. These statutes provide no proof of the existence of an overriding American policy permitting a vessel, otherwise uninjured, to recover from one whose negligence has caused delay in passage.

Many of the cases cited by the claimants are no more persuasive than the statutes. Cases which permit a party who suffers special damages, different from the inconvenience suffered by the general public, to recover against one responsible for a nuisance do not reach the question before us. In some of the cases cited, the plaintiffs either sought injunctions rather than damages or suffered direct physical injury to property from the wrongful acts of the defendants. *E.g.*, *Sinclair Refining Co.* v. *Smith*, 13 F.2d 68 (5th Cir. 1926) (recovery for direct interference with riparian rights). In *The Jamaica*, 51 F.2d 858 (W.D.N.Y. 1931), the issue in the present case was not discussed and apparently was not raised. Two relatively recent district court decisions do directly support the claimants. Both *In Re China Union Lines, Ltd.*, 285 F. Supp. 426 (S.D. Tex. 1967), and *In Re Lyra Shipping Co.*, 360 F.Supp. 1188 (E.D. La. 1973), allowed damages for detention of ships otherwise unaffected by collisions which obstructed channels. In view of other rulings to the contrary, we are unable to find that these decisions establish the existence of an overriding domestic policy.

In *Petition of Kinsman Transit Co.* (Kinsman II), 388 F.2d 821 (2d Cir. 1968), the court dealt with claims of shipowners who were unable to complete intended movements in the Buffalo River because of an obstruction which closed that waterway for two months. The claims were described by the court as follows:

> Neither the Gillies nor the Fair [ships of claimants] suffered any direct or immediate damage for which recovery is sought. The instant claims occurred only because the downed bridge made it impossible to move traffic along the river. *Id.* at 825 (footnote deleted).

In an earlier decision, *Petition for Kinsman Transit Co.* (Kinman I), 338 F.2d 708 (2d Cir. 1964), the court determined liability and permitted recovery by those who suffered "direct" consequences of the negligent conduct and whose "damage, although other and greater than expectable, is of the same general sort that was risked." *Id.* at 724. The parties permitted to recover were owners of ships and the other property physically damaged in the series of events which occurred when one defendant's ship, which was improperly secured, broke loose into the river. Nevertheless, in *Kinsman II* the court denied recovery because the injuries suffered by the detained claimants were too "remote" or "indirect" a consequence of the defendants' negligence. 388 F.2d at 821.

The requirement of *Kinsman II* that recovery for pure economic loss be limited to that which is direct and not too remote a consequence of the defendants' negligence is not unlike the test in *Rivtow Marine Ltd.* v. *Washington Iron Works*, *supra*, that the damages be "the direct and demonstrably foreseeable result of the breach of that duty." [1974] S.C.R. at —, 6 W.W.R. at 711. We conclude that there is no absolute rule either in Canada or the United States which forbids recovery for economic loss where the claimant has suffered no physical injury. Nor does a simple requirement of foreseeability provide the answer. Each nation's courts have been confronted with the task of determining the limit to which liability of a tortfeasor for consequential damages may be extended. The *Kinsman* court referred in both opinions to Judge Andrews' statement, dissenting in *Palsgraf* v. *Long Island R.R.*, 248 N.Y. 339, 354-55, 162 N.E. 99, 104 (1928): "It is all a question of expediency, * * * of fair judgment, always keeping in mind the fact that we endeavor to make a rule in each case that will be practical and in keeping with the general understanding of mankind." *See* 338 F.2d at 725, 388 F.2d at 825. In *Gypsum Carrier, Inc.* v. *The Queen*, *supra*, 78 D.L.R. (3d) at 182, the Canadian court quoted Lord Denning, M.R., in *Spartan Steel & Alloys, Ltd.* v. *Martin &*

Co. (Contractors) Ltd., [1973] 1 Q.B. 27, 36-37, in part as follows:

> At bottom I think the question of recovering economic loss is one of policy. Whenever the courts draw a line to mark out the bounds of *duty*, they do it as a matter of policy so as to limit the responsibility of the defendant. Whenever the courts set bounds to the *damages* recoverable — saying that they are or are not, too remote — they do it as matter of policy so as to limit the liability of the defendant.

The claimants-appellants have failed to establish the existence of an overriding policy of the United States which is different from that of Canada on the question of permitting recovery for economic loss in the absence of physical injury.[7] Both countries recognize the right to recover for pure economic loss where particular relationships, *e.g.*, accountant and client, securities advisor and investor, or manufacturer aware of defect who knows of intended use by consumer, establish a clear duty whose breach leads to injury. However, in cases where there is no pre-existing or special relationship and the duty owed to the claimants is the same as that owed to the public in general, the courts have deemed it reasonable to permit recovery only by those whose damages are "direct." Though arguments can be made for the opposite conclusion, courts in both countries have determined that the damages suffered by detained vessels which are not otherwise injured are too remote or indirect to warrant recovery. Since neither Canada nor the United States has adhered to an absolute rule either permitting or denying damages under these circumstances, there was really no choice-of-laws decision to be made. We cannot say that the district court erred.

Affirmed on appeal and cross-appeal. No costs allowed.

---

[7] For a comprehensive treatment of the subject in general, see F. James, *Limitations on Liability for Economic Loss Caused by Negligence: A Pragmatic Appraisal*, 25 Vand. L. Rev. 43 (1972).

APPENDIX B

THE UNITED STATES DISTRICT COURT

THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

IN THE MATTER OF THE COMPLAINT)
OF THE BETHLEHEM STEEL)
CORPORATION, ETC.)

CIVIL ACTION NO. C75-104

MEMORANDUM AND ORDER

KRUPANSKY, J.

This a maritime action wherein plaintiff, Bethlehem Steel Corporation, has asserted its statutory right, pursuant to 46 U.S.C. §§183 et seq., as amended, to a limitation of liability on claims arising from the collision of its vessel, the Steamer Steelton, with Bridge No. 12 in the course of the ship's passage through the Welland Canal of the St. Lawrence Seaway. The

maritime and admiralty jurisdiction of this Court is property invoked pursuant to 28 U.S.C. §1333.

On August 5, 1977, plaintiff filed in this Court its Motion to Dismiss All Claims, appending thereto a certified copy of the July 21, 1977 Judgment Order of Justice George Addy of the Federal Court of Canada, Trial Division, delivered in an action related to these proceedings styled Bethlehem Steel Corporation v. The St. Lawrence Seaway Authority, No. T-3418-74. Claimants herein responded in opposition to the Motion on August 16, 1977. Plaintiff thereafter filed on September 13, 1977, a Supplement to Plaintiff's Motion to Dismiss All Claims, appending thereto a certified copy of the Final Judgment Entry in the aforesaid Canadian proceeding. On

October 6, 1977, claimants filed a Supplemental Response in Opposition to Plaintiff's Motion to Dismiss Claims to which plaintiff replied on October 14, 1977. In addition, plaintiff filed on October 14, 1977 a Supplement to its Motion to Dismiss all Claims. The Court is, therefore, called upon to render a final decision respecting plaintiff's liability on the several claims filed herein. A brief review of the facts and circumstances giving rise to this action and a chronology of the judicial proceedings to date, both here and in Canada, is appropriate.

The Steamer Steelton is a Great Lakes bulk freighter owned and operated by plaintiff, a corporation duly organized and existing under the laws of the State of Delaware. On August 25,

1974, while proceeding through the Welland Canal on a voyage from Buffalo, New York to Contrecoeur, Quebec, Canada, the Steelton collided with Bridge No. 12, a vertical lift highway bridge spanning the Welland Canal, causing extensive damage to both the vessel and the bridge. As a result of this collision, which occurred wholly within the territorial boundaries of Canada, Bridge No. 12 was destroyed. The debris obstructing the Welland Canal prevented vessels from traversing the waterway at that location for several days.

On September 26, 1974, plaintiff filed an action in the Federal Court of Canada against the St. Lawrence Seaway Authority and all other persons having claims against plaintiff and the steamship Steelton requesting a limitation of liability under Canadian law. Pursuant to the Canada Shipping Act, the Federal

Court of Canada limited plaintiff's liability and ordered plaintiff to pay into that court the amount of $671,489.09 in Canadian dollars, plus interest to the date of deposit. On November 1, 1974 plaintiff deposited with that court the amount of $680,733.56 in Canadian dollars, including interest, ($691,761.44 in United States dollars).

In addition to those actions filed in the Federal Court of Canada, a number of separate actions were filed against plaintiff in this Court. Plaintiff thereafter filed in this Court a Complaint, pursuant to Rule 9(h), Fed. R. Civ. P., Rule F, Supplemental Rules for Certain Admiralty and Maritime Claims, and 46 U.S.C. §185, petitioning this Court for limitation of liability, while claiming the benefit of the lesser limitation provided by the Canada Shipping Act.

Subsequent to the filing of an ad interim stipulation for value and a surety deposit in the sum of $850,000.00, with interest, (the limit of liability under 46 U.S.C. §183) this Court issued, on February 6, 1975, a Monition ordering all persons or corporations claiming damages for any and all losses resulting from the aforesaid collision, to file their respective claims and answers with the Clerk of this Court on or before March 10, 1975, (later extended to April 11, 1975). The Court further enjoined the institution and prosecution of any and all suits, actions or legal proceedings in any court whereSoever situated, arising as a result of the aforesaid collision, except in proceedings for limitation of liability against plaintiff or against the Steelton, other than the proceedings

already commenced in the Federal Court of Canada, Trial Division, Ottawa, Canada, Case No. T-3418-74.

Pursuant thereto, a number of separate actions arising out of the Steelton collision, which were then pending before this Court, were stayed while each of the plaintiffs therein filed claims in this proceeding. The following claims, identified by the name of the claimant, the original case number (if any separate action is still pending before the Court), the nature of the claim and the amount of damages sought, remain pending in this action:

> Claim of Marriott Corporation, through its division, Sunline Agencies, and Oceanic Sunline Special Shipping Company; C74-1170; for the delay of its chartered passenger vessel Stella Maris II, in the amount of Forty-One Thousand, Three Hundred and Fifty-Six Dollars ($41,356.00).

Claim of Weyerhaeuser Company, through its division, Weyerhaeuser Line; C74-1174 for the delay of its chartered cargo vessel Pallas, in the amount of Sixty-One Thousand, Nine Hundred and Seventeen Dollars and Nineteen Cents ($61,917.19).

Claim of A/S Rederiet Odfjell; C74-1180; for the delay of its caro vessel Bow Rogn, in the amount of One Hundred Thousand Eight Hundred Forty-Eight Dollars and Thirty-Three Cents ($100,848.33).

Claim of Polski Linie Ocaniczne; C74-1196; for the delay of its cargo vessels Zawiercie, Zakopane and Zabrze, in the amount of Ninety-Two Thousand Dollars ($92,000.00).

Claim of Naviera Alcala, S.A.; C74-1197; for the delay of its chartered cargo vessel Sebastiano, in the amount of Seventy Thousand, Five Hundred Dollars ($70,500.00).

Claim of Matthew Shipping Company Limited and Matthew Ship Chartering Limited; C74-1199; for the delay of its chartered motor vessels Sissy and Jobella, in the amount of Eighty Four Thousand, Three Hundred and Fifty Dollars ($84,350.00).

Claim of I. S. Joseph Shipping Co., Ltd.; C74-1200; for the delay of its chartered cargo vessel Golfo Di Palermo, in the amount of One Hundred and Forty-Five Thousand Dollars ($145,000.00).

Claim of Manchester Lines, Inc.; C74-1201; for the delay of its chartered cargo vessels Fortuna and Manchester Mercurio, in the amount of Seventy-Five Thousand Dollars ($75,000.00).

Claim of Naviera Ceresio S.A.; C74-1202; for the delay of its motor vessel Honesty, in the amount of One Hundred Thousand Dollars ($100,000.00).

Claim of Scindia Steam Navigation, Ltd.; C74-1203; for the delay of its motor vessel Jalayaya, in the amount of One Hundred Thousand Dollars ($100,000.00).

Claim of Federal Commerce and Navigation [1974] [Ltd.]; C74-1204; for the delay of its chartered motor vessels Chertal, Elainne, Atlantic Charity, Pitria, Atlantic Hope, Federal Seaway and Marylisa, in the amount of Three Hundred Thousand Dollars ($300,000.00).

Claim of Skips A/S Westray; C74-1213; for the delay of its chartered cargo vessels Mambo and Rhumba, in the amount of Ninety-Three Thousand Dollars ($93,000.00).

Claim of Hyman-Michaels Company; C75-2; for the delay of its chartered cargo vessel Fifth Avenue, in the amount of One Hundred Thousand Dollars ($100,000.00).

Claim of Jadranska Slobodna Plovidba; C75-3; for the delay of its cargo vessel Makarska, in the amount of Forty-Five Thousand Dollars ($45,000.00).

Claim of Ocean Transport, Inc.; C75-38; for the delay of its chartered motor vessel Diakan Truth, in the amount of Sixty-Six Thousand, One Hundred and Eleven Dollars and Forty-Eight Cents ($66,111.48).

Claim of Kommanditgesellschaft Great Lakes Transcaribbean Line G.M.B.H. and Co.; C75-39; for the delay of its chartered motor vessels Faifun and Dorothea Bolten, in the amount of Eighty Thousand Dollars ($80,000.00).

Claim of Richmond Shipping Limited and Cast Shipping Limited; C75-40; for the delay of its chartered cargo vessel Atlantic Skou, in the amount of Seventy-Five Thousand Dollars ($75,000.00).

Claim of Luria Brothers & Company, Inc.; for the delay of its chartered cargo vessel Vanda, in the amount of Forty-Two Thousand Dollars ($42,000.00).

Claim of Murmansk Shipping Company; for the delay of its cargo vessels Baltijsk and Sasha Borodulin, in the amount of Twenty-Three Thousand Dollars ($23,000.00).

Claim of Black Sea Shipping Company, for the delay of its cargo vessel Donetsky Metallurgyovv, in the amount of Eighty-Eight Thousand Dollars ($88,000.00).

Claim of Kurt Orban Company, Inc.; for demurrage fees, interest and other charges resulting from the delay in the shipment of steel coils aboard the cargo vessel S. S. Aalsum, in the amount of One Hundred and Six Thousand, One Hundred and Two Dollars and Ninety-Five Cents ($106,102.95).

Claim of Parcel Tankers, Inc.; for the delay of its chartered vessel M/T Stolt Condor, in the amount of One Hundred and Eight Thousand, Two Hundred and Sixty Dollars ($108,260.00).

Upon the Motion of plaintiff, the matter was subsequently brought to a hearing before this Court to determine the applicable law governing the limitation of liability, to wit: the Law of Canada, i.e., the Canada Shipping Act, §§647, et seq., as amended, or the law of the United States, i.e., an Act of Congress of March 3, 1851, 46 U.S.C. §§183 et seq., as amended. Upon a

thorough review of the Canada Shipping Act, §§647 et seq., the pleadings and oral arguments of counsel, the testimony of the expert witnesses, together with the relevant case authority, the Court issued its Order of April 22, 1976 in which it determined the applicable law of the case. Initially, the Court adopted the settled principle that "in the absence of some overriding domestic policy translated into law, the right to recover for a tort depends upon and is measured by the law of the place where the tort occurred," the lex loci delicti commissi. Black Diamond S. S. Corporation v. Robert Stewart & Sons (Norwalk Victory), 336 U.S. 386, 396 (1949). See, Cuba Railroad Company v. Crosby, 222 U.S. 473 (1912); Slater v. Mexican National Railroad Company, 194 U.S. 120 (1904); Petition of

Chadade Steamship Co., Inc. (Yarmouth Castle), 266 F. Supp. 517 (S.D. Fla. 1967). Since the collision of the Steelton with Bridge No. 12 occurred within a Canadian waterway, it was determined that the rights and liabilities of the parties arising as a consequence of the collision are governed by law of Canada.

Further examination of the law revealed the equally settled principle that even "where the rights of the parties are grounded upon the law of jurisdictions other than the forum, . . . the forum will apply the foreign substantive law, but will follow its own rules of procedure." Bournias v. Atlantic Maritime Co., Ltd., 220 F.2d 152, 154 (2d Cir. 1955). Upon exhaustive review of the somewhat sparse legal precedent, the Court determined

that the specific limitation of liability provisions of the Canada Shipping Act were procedural in nature and that the law of the forum, i.e., 46 U.S.C. §§183 et seq., must determine the maximum limitation of the fund created in the action before this Court. Having so determined, plaintiff's surety deposit of $850,000.00, previously deposited with the Court pursuant to 46 U.S.C. §185, was not diminished to reflect the lesser monetary limit of the Canada Shipping Act.

Now, in conformity with the Court's prior ruling that the law of Canada, the lex loci delicti commissi, controls the issues of substantive law in the action before this Court, plaintiff moves the Court to dismiss all of the claims presented herein, citing in support of its Motion the July 21, 1977

Judgment Order of the Federal Court of Canada. In that order, Justice Addy disallowed the claims of the National Steel Corporation and the Wayne Soap Company. Plaintiff asserts, and Justice Addy himself observed that the claims filed by both of these claimants in the Federal Court of Canada are of the same nature as the claims pending before this Court. Upon comparison, the Court concurs in this assertion and similarly concludes that the claims filed herein must be dismissed.

Alleging damages in the amount of $243,680.20, National Steel Corporation filed a claim in the Canadian proceedings for the loss of profits from its two motor vessels, as a result of the delay caused by the collision of the Steelton with Bridge No. 12 on the Welland Canal. The Wayne Soap

Company filed a similar claim for the additional shipping costs incurred in the overland transfer of tallow, which became necessary when maritime travel was halted on the Welland Canal. Careful scrutiny of the 22 claims filed in the action before this Court reveals 21 claims for loss of profits resulting from vessel delay and one claim for additional shipping costs and interest, also resulting from vessel delay.

In his order of July 21, 1977, Justice Addy summarized at the outset the fundamental precepts of law giving rise to remedies for tortious conduct. At pages four and five of the Order, the learned trial judge stated:

> The redress of what might appear to be a real wrong will not be recognized where its enforcement would greatly impede the proper functioning of our society or, because of its intricate interrelationships, ultimately result in

greater wrongs than those for which relief is contemplated. Such problems must frequently be solved pragmatically and it matters little whether we declare that the limits which must be imposed are dictated by policy, common sense or by the more philosophically acceptable concepts of social justice or of legal theory. The important thing is that the law, in this necessarily hazy area of human relations, must lay down rules which define limits which can be recognized by all members of our society in order that they may be aware of their respective rights, duties and responsibilities and govern themselves accordingly.

In the law of torts generally, the courts, in order to formulate logically defensible basis for creating liability on the one hand and, on the other hand, for imposing limits to the responsibility for damages which might otherwise flow from a tortious act or omission, have applied to the problem of remoteness of damages three main tests. The first test is whether the alleged tortfeasor had a duty of care to the claimant; in applying this test difficulties arise in defining the nature of the duty and in establishing the class of people to whom it is owned. At times in order to restrict and at other times to enlarge

> the area of responsibility, the courts have resorted to the added tests of "foreseeability" of the nature of the damage and of causality, that is, of determining whether the damage was a direct consequence of the negligent act or whether it really resulted from some other intervening cause. The courts also at times refer to remoteness of damage as a separate test distinct from the other three. I, however, find difficulty in appreciating how, from the standpoint of legal theory, damage can be too remote if the nature of that damage is reasonably foreseeable, for it has been well established that once the nature of the damage is foreseeable it is no answer to say that its actual extent is not.

The Court recognized that where the damage incurred by a claimant is solely of the nature of an economic loss, and does not involve actual physical injury, "the general law is that such damage is not recoverable even where it might have been foreseeable and where the proper causal relationship between the tortious act

and the damage exists." Although several exceptions to the general law have arisen in Canada, Justice Addy stated his view that "the range of cases, where economic loss is not dependent upon physical damage of some sort is recoverable, remains nevertheless very limited." Bethlehem Steel Corporation v. The St. Lawrence Seaway Authority, supra at 6.

To support his conclusion that there can be no recovery for economic loss resulting from vessel delay, Justice Addy cited to the recent decision in Gypsum Carrier, Inc. v. Her Majesty the Queen, No. T-3747-71 (Federal Court of Canada May 9, 1977). A review of the facts and circumstances in that action discloses a fact pattern which is not dissimilar to that presented herein. An ocean going freighter,

the Harry Lundeberg, collided with a swing span railway bridge spanning the Fraser River near the city of New Westminster, British Columbia. As a result of the collision, all railway traffic over the bridge was suspended for a period of eight days. Three railway companies filed claims for expenses incurred as a result of traffic delay and the rerouting of railway traffic.

The trial court acknowledged the general principle that "the absence of physical damage to any property of the railway companies does not, by itself, preclude recovery for the additional expense the railway companies incurred (the economic loss)." Gypsum Carrier, Inc. v. Her Majesty the Queen, supra at 12. In reviewing the law and formulating the appropriate criteria for evaluating the liability for damages,

the court stated at 26,

> In my opinion, the test of foreseeability (including "proximity" as described by Lord Atkin) is a relevant test to apply in the case before me. But it must be combined with, or followed by, what is, I think a third approach.
>
> To my mind, economic loss, even though foreseeable, ought not to be recoverable unless it results directly from the careless act. . . .

In reaching that determination, and concluding that the railway companies could not recover for economic losses resulting from rail traffic delay, the Court referred to the following excerpts from the decision in Donoghue v. Stevenson, [1932] A.C. 562, at 581:

> You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who, then, in law is my neighbor? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation

as being so affected when I am directing my mind to the acts or omissions which are called in question. This appears to me to be the doctring of Heaven v. Pender, as laid down by Lord Esher (then Brett M.R.) when it is limited by the motion of proximity introduced by Lord Esher himself and A. L. Smith L. J. in Le Lievre v. Gould. Lord Esher says: "That case established that, under certain circumstances, one man may owe a duty to another, even though there is no contract between them. If one man is near to another, or is near to the property of another, a duty lies upon him not to do that which may cause a personal injury to that other, or may injure his property." So A. L. Smith L.J.: "The decision of Heaven v. Pender was founded upon the principle, that a duty to take due care did arise when the person or property of one was in such proximity to the person or property of another that, if due care was not taken, damage might be done by the one to the other." I think that this sufficiently states the truth if proximity be not confined to mere physical proximity, but be used, as I think it was intended, to extend to such close and direct relations that the act complained of directly affects a person whom the person alleged to be

> bound to take care would know would be directly affected by his careless act.

In conclusion, it was held in Gypsum Carrier, Inc. v. Her Majesty the Queen, supra, that under the reasonably foreseeable and direct consequence tests "the railway companies were not persons so closely and directly affected that those having charge of the vessel ought reasonably to have had the railways in contemplation when the vessel was proceeding towards the bridge . . . . " (Id. at 33); that "the railways' economic loss was not, in my opinion, a direct and reasonably foreseeable result of the striking of the bridge by the vessel." Id at 34. Therefore, the claims for economic loss were denied.

In addition to the decision in the Gypsum Carrier case, Justice Addy relied upon another recent Canadian opinion disclosing a similar fact pattern. In

Star Village Tavern v. Nield and Ken Cook Ltd., [1976] 6 W.W.R. 80 (Hamilton, J. Man. Q.B.), a motor vehicle collided with a bridge spanning the Red River in Manitoba, Canada. The resultant damage closed the bridge for approximately one month, and the detour of all traffic increased the traveling distance from Selkirk, Manitoba to plaintiff's tavern from the normal 1-1/2 miles to 15 miles. Plaintiff brought an action against the negligent operator of the motor vehicle for the economic loss to his tavern business resulting from the reduced patronage while the bridge was in disrepair. Finding that such damages were beyond the reasonable contemplation of the misfeasant, the court stated at 83:

> [T]here must be some link between the wrongdoer and the person suffering loss. . . . [I]t appears that the test of foreseeability remains. That test confirms the limits of liability

> within reason. To abandon it places compensation at large and within the limitless discretion of the judiciary.

Finally, Justice Addy analyzed these precedents, and the cases cited therein, in light of the recent decision of the Supreme Court of Canada in Rivtow Marine Ltd. v. Washington Iron Works, [1974] S.C.R. 1189. This was a products liability action for damages incurred as a result of the defective design and manufacture of two pintle-type cranes installed on plaintiff's log barge, the Rivtow Carrier, for the purpose of loading logs. Defendants had both been aware for some time that the pintle-type cranes were subject to cracking due to negligent design, but neither company warned plaintiff of the potential danger and accompanying necessity for repair. Plaintiff sued for the cost of repairing the cranes and for the loss of use of

the Rivtow Carrier during the repair period. The Supreme Court of Canada approved the award of damages for economic loss, in the absence of direct physical harm, where a defendant was duty-bound to exercise reasonable care to the foreseeable plaintiff. The Court, speaking through Ritchie, J., stated at 1215:

> [I] am satisfied that in the present case there was a proximity of relationship giving rise to a duty to warn and that the damages awarded by the learned trial judge were recoverable as compensation for the direct and demonstrably foreseeable result of the breach of that duty.

Applying the foregoing legal precedents to the facts before him, Justice Addy concluded, in the particular language of the Rivtow Marine case, that there was no relationship between the claimants and the Bethlehem Steel Corporation of sufficient proximity that

gave rise to a duty to claimants. See, Bethlehem Steel Corporation v. Her Majesty the Queen, supra, at 6. The court furthermore held that there was no threat of physical harm to the property of the claimants caused by the Bethlehem Steel Corporation. Id. at 10. Having so concluded, Justice Addy disallowed the claims of both the National Steel Corporation and the Wayne Soap Company, having also determined that the latter claimant was "still further removed from the orbit of responsibility of Bethlehem Steel." Id. at 11. The judgment entry which made final the disposition of the foregoing claims and others similarly pressed in the Federal Court of Canada, was entered on August 22, 1977. Attached to the Supplement to Plaintiff's Motion to Dismiss all Claims is a Certificate of Search, wherein the Registry Officer

of the Federal Court of Canada, Trial Division certified that no appeal has been filed against the August 22, 1977 Judgment of Justice Addy as of October 3, 1977, three days after the statutory time limit for filing such an appeal.

Upon a thorough examination of the judgment order of Justice Addy, together with each of the decisions cited therein, this Court reaches the inexorable conclusion that the law of Canada, in its current posture, denies any recovery for economic losses resulting from vessel delay as presented in the instant litigation by the claims filed before this Court and the Federal Court of Canada. Indeed, in accordance with its earlier determination that the lex loci delicti commissi controls the issues of substantive law raised in this proceeding, the Court must follow

the rulings of Justice Addy as the law of Canada most directly in point (in view of the identity of the factual and legal issues presented both here and in the Canadian proceedings).

In their supplemental brief in opposition to plaintiff's Motion to Dismiss, claimants assert that the law of Canada, as applied by Justice Addy, contravenes the manifest domestic policy of the United States, citing in support of this propcsition, two district court decisions awarding damages for economic losses incurred as a result of vessel delay, viz., In Re Lyra Shipping Company, Ltd., 360 F. Supp. 1188 (E.D. La. 1973) and In Re China Union Lines, Ltd., 285 F. Supp. 426 (S.D. Tex. 1967). While the Court acknowledges these rulings, it nonetheless remains cognizant of the decision in Petition of Kinsman Transit

Company, 388 F.2d 821 (2d Cir. 1968), which, along with Palsgraf v. Long Island R. R. Co., 248 N.Y. 339, 162 N.E. 99 (1928), has become textbook tort law with respect to the doctrines of foreseeability and remoteness of damage. In Kinsman, the Court of Appeals for the Second Circuit confronted claims for economic losses resulting from the blockage of the Buffalo River after two vessels collided with the Michigan Avenue Bridge. The Court stated at 388 F.2d 824, 825:

> On the previous appeal we stated aptly: "somewhere a point will be reached when courts will agree that the link has become too tenuous -- that what is claimed to be consequence is only fortuity." 338 F.2d at 725. We believe that this point has been reached with the Cargill and Cargo Carriers claims. Neither the Gillies nor the Farr suffered any direct or immediate damage for which recovery is sought. The instant claims occurred only because the downed bridge made it impossible to move traffic

> along the river. Under all the circumstances of this case, we hold that the connection between the defendants' negligence and the claimants' damages is too tenuous and remote to permit recovery. "The law does not spread its protection so far." Holmes, J., in Robins Dry Dock, supra, 275 U.S. at 309, 48 S.Ct. at 135.
>
> In the final analysis, the circumlocution whether posed in terms of "foreseeability," "duty," "proximate cause," "remoteness," etc. seems unavoidable. As we have previously noted, 338 F.2d at 725, we return to Judge Andrews' frequently quoted statement in Palsgraf v. Long Island R. R., 248 N.Y. 339, 354-355, 162 N.E. 99, 104, 59 A.L.R. 1253 (1928) dissenting opinion): "It is all a question of expediency * * * of fair judgment, always keeping in mind the fact that we endeavor to make a rule in each case that will be practical and in keeping with the general understanding of mankind." (footnotes omitted).

Moreover, the Court cannot disregard the controlling principle of lex loci delicti commissi which the Supreme Court adopted in Black Diamond S.S. Corporation v. Robert Steward & Sons,

336 U.S. 386 (1949). Therein, at 395-396, the Supreme Court stated:

> But if it is the law of Belgium that the wrong creates no greater liability than that recognized by the Convention of 1924, we cannot, without more, regard our own statutes as expanding the right to recover. Any other conclusion would disregard the settled principle that, in the absence of some overriding domestic policy translated into law, the right to recover for a tort depends upon and is measured by the law of the place where the tort occurred. Smith v. Condry, 1 How. 28, 33, 11 L.Ed. 35; Slater v. Mexican National R. Co., 194 U.S. 120, 24 S.Ct. 581, 48 L.Ed. 900; Cuba R. Co. v. Crosby, 222 U.S. 473, 32 S.Ct. 132, 56 L.Ed. 274, 38 L.R.A., N.S., 40; Western Union Telegraph Co. v. Brown, 234 U.S. 542, 34 S.Ct. 955, 58 L.Ed. 1457

Quite simply, plaintiff's case law references do not constitute an "overriding domestic policy translated into law." Furthermore, as stated by the Supreme Court of the United States in Cuba Railroad Company v. Crosby, 222 U.S. 473, 478 (1912):

> The law of the forum is material only as setting a limit of policy beyond which such obligations will not be enforced there. With very rare exceptions the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. American Banana Co. v. United Fruit Co., 213 U.S. 347, 356, 53 L.Ed. 826, 832, 29 Sup. Ct. Rep. 511, 16 A. & E. Ann. Cas. 1047. See Bean v. Morris, 221 U.S. 485, 486, 487, 55 L.Ed. 821, 823, 31 Sup. Ct. Rep. 703. That, and that alone, is the foundation of their rights.

It may be contended that there exists an overriding domestic policy for providing redress for the wrongful acts of negligent tortfeasors. It may even be asserted that the test of foreseeability, which is generally adhered to by the courts of Canada and which was applied herein by Justice Addy, itself constitutes an established precept of of tort law supporting the domestic policy of succoring the aggrieved com-

plainant. It does not follow, however, that all logical (or attenuated) extensions of a given tenet of law, or the application thereof to the myriad permutations of factual circumstances, rise to the level of domestic policy, much less to the level of domestic policy sufficient in depth and weight to override the controlling law of a foreign nation. Indeed, the doctrine of lex loci delicti commissi is itself derived from a domestic and international policy of comity and comitias gentium. To accede to complainants' argument would emasculate existing domestic and international policy and accord only salutory recognition to the overriding principle of lex loci delicti.

The court is therefore compelled to adopt the rulings of the Federal Court of Canada on the issues of sub-

stantive law presented herein, and the 22 claims filed in this proceeding for damages resulting from vessel delay, as well as the 17 individual actions previously referred to which raise the same issues confronted herein, must be dismissed under the law of Canada.

Accordingly, IT IS ORDERED that the claims of the following claimants be, and the same are hereby, dismissed with prejudice at claimants' cost:

1. Marriott Corporation, through its division, Sunline Agencies and Oceanic Sunline Special Shipping Company.

2. Weyerhaeuser Company, through its division, Weyerhaeuser Line.

3. A/S Rederiet Odfjell.

4. Polski Linie Ocaniczne.

5. Naviera Alcala, S.A.

6. Matthew Shipping Company Limited and Matthew Ship Chartering Limited.

7. I.S. Joseph Shipping Co., Ltd.

8. Manchester Lines, Inc.

9. Naviera Ceresio, S. A.

10. Scindia Steam Navigation Ltd.

11. Federal Commerce and Navigation [1974] [Ltd.]

12. Skips A/S Westray.

13. Hyman-Michaels Company.

14. Jadranska Slobodna Plovidba.

15. Ocean Transport, Inc.

16. Kommanditgesellschaft Great Lakes Transcaribbean Line G.M.B.H. and Co.

17. Richmond Shipping Limited and Cast Shipping Limited.

18. Luria Brothers & Company, Inc.

19. Murmansk Shipping Company.

20. Black Sea Shipping Company.

21. Kurt Orban Company, Inc.

22. Parcel Tankers, Inc.

In view of the foregoing resolution and disposition of all outstanding claims in this case, all pending motions to compel discovery, (to wit: 12 separate Motions

to Compel Answers to Interrogatories and 11 separate Motions for Production of Documents, all filed by plaintiff), are hereby rendered moot and are, accordingly, denied. The Complaint filed by Bethlehem Steel Corporation for the limitation of liability is also rendered moot by the dismissal of all claims filed herein, and is accordingly dismissed with prejudice at claimants' cost.

IT IS FURTHERMORE ORDERED that the following individual actions which were originally filed in this Court and subsequently stayed pending a resolution of the claims filed in the instant proceeding, are, for the same reasons herein announced, hereby dismissed with prejudice at plaintiffs' cost:

1. Sunline Agencies, et. al. v. Bethlehem Steel Corporation, C74-1170.

2. Weyerhaeuser Line, etc. v. Bethlehem Steel Corporation, C74-1174.

3. A/S Rederiet Odfjell v. Bethlehem Steel Corporation, C74-1180.

4. Polski Linie Ocaniczne v. Bethlehem Steel Corporation, C74-1196.

5. Naviera Alcala S.A. v. Bethlehem Steel Corporation, C74-1197.

6. Matthew Shipping Company Limited et. al. v. Bethlehem Steel Corporation, C74-1199.

7. I. S. Joseph Shipping Co., Ltd. v. Bethlehem Steel Corporation, C74-1200.

8. Manchester Liners, Ltd. v. Bethlehem Steel Corporation, C74-1201.

9. Naviera Ceresia, S.A. v. Bethlehem Steel Corporation, C74-1202.

10. Scindia Steam Navigation, Ltd. v. Bethlehem Steel Corporation, C74-1203.

11. Federal Commerce and Navigation [1974][Ltd.] v. Bethlehem Steel Corporation, C74-1204.

12. Skips A/S Westray v. Bethlehem Steel Corporation, C74-1213.

13. Hyman-Michaels Company v. Bethlehem Steel Corporation, C75-2.

14. Jadranska Slobodna Plovidba v. Bethlehem Steel Corporation, C75-3.

15. Ocean Transport, Inc. v. Bethlehem Steel Corporation, C75-38.

16. Kommanditgesellschaft Great Lakes Transcaribbean Line G.M.B.H. and Co. v. Bethlehem Steel Corporation, C75-39.

17. Richmond Shipping Limited, et. al. v. Bethlehem Steel Corporation, C75-40.

The foregoing individual actions shall be dismissed pursuant to Rule 58, Fed. R. Civ. P., by separate entries of final judgment which shall refer to and incorporate therein this final judgment order.

IT IS SO ORDERED.

/s/Robert B. Krupansky
United States District Judge